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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/755,779

01/12/2004

Barnet Liberman

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1971

27799

7590

09/11/2007

COHEN, PONTANI, LIEBERMAN & PAVANE

551 FIFTH AVENUE

SUITE 1210

NEW YORK, NY 10176

EXAMINER

THAKUR, VIREN A

ART UNIT

PAPER NUMBER

1761

MAIL DATE

DELIVERY MODE

09/11/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/755,779

Applicant(s)

LIBERMAN, BARNET

Examiner

Viren Thakur

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2007.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 36-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 36-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on July 11, 2007 has been entered.

Response to Amendment

2. The rejection of claims 1, 6-10 and 36-37 under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106433) in view of Christopher (US 3411433) and claim 38 in further view of Liberman (US 5807598) have been withdrawn.
3. The rejection of claims 1-4, 6-10 and 36-37 under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106433) in view of Mead (US 2507862) and Morrison (US 2807548), and claim 38 in further view of Liberman (US 5807598) have been withdrawn.

Response to Arguments

4. Applicant's arguments with respect to claim 1 as being rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Christopher (US 3411433) and Liberman in view of Mead (US 2507862) and Morrison (US 2807548) have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
 1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

- 7. Claims 1-4, 6-10 and 36-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Turpin et al. (US 4190757). Brastad (US 3332370) and Wheeler (US 3955348) are cited as evidence, as discussed below.**

The limitations taught by Liberman are taken as cited in the prior Office Action, mailed April 17, 2007. Regarding instant claim 1, Liberman is silent in teaching wherein the hole is substantially covered by a heat conducting foil placed on the upper surface of the presentation board.

Turpin et al. is relied on to teach using an aluminum foil as a support surface (See Figure 2, Item 44; Figure 6, Item 44; Column 6, Lines 56-61 and Column 8, Lines 8-18) for a frozen food product (Column 9, Lines 18-20) placed thereon.

Therefore, Turpin et al. is relied on to teach the concept of using aluminum foil as a support layer in between a food product and a surface comprising depressions. In figure 2, although corrugated, the depressions in the corrugation would have been analogous to holes on a presentation board. In Figure 6, Turpin et al. also show two openings (between item 74) and an aluminum foil (Item 44) used in supporting a food product thereon. Based on these teachings, it would have been obvious to one having ordinary skill in the art to cover the top of the perforated board of Liberman with foil for the purpose of providing support for the meat product placed thereon and for protecting the meat product from the perforated presentation board. The Examiner asserts that Liberman teaches

freezing meat products such as fish, pork and beef (Paragraph 0030).

Depending on the type of meat placed on the presentation board, it would have been obvious that soft or flaky meats such as ground beef or fish would have been indented or imprinted by the perforations, thus leaving an undesired appearance. This concept of covering a hole to prevent the food product from falling through is further supported by Brastad, on column 7, lines 27-41 and by Wheeler on column 4, lines 21-38, who teach the problem of the food material falling through apertures and covering said apertures to prevent the falling of the food material. Therefore, based on the teachings of the prior art in combination with the knowledge of the ordinarily skilled artisan, it would have been obvious to one having ordinary skill in the art to use a covering material, such as the aluminum, for the purpose of supporting the meat product and thus preventing imprinting or indentation on the meat by the perforations in the presentation board.

Regarding instant claim 2, Liberman is silent in using a second heat conducting foil on the lower surface of the presentation board. Nevertheless, the teachings of Turpin et al. provide motivation to the ordinarily skilled artisan for the application of an aluminum foil layer for the purpose of providing support for the food product. In addition, Liberman teaches wherein the presentation board is a perforated board. By removing material from the presentation board, it would have been obvious to the ordinarily skilled artisan that the rigidity of the board would have been diminished compared to a board without perforations.

Therefore, since Turpin et al. teach the use of aluminum as a support layer, to place an additional layer of foil below the perforated board of Turpin et al. would have been obvious to the ordinarily skilled artisan for the purpose of adding additional rigidity to the perforated board. Additionally, since Turpin et al. teach using foil as a support layer, to add any additional pieces of foil such as below the presentation board would have been obvious to the ordinarily skilled artisan for providing additional support. Therefore, the addition of a second heat conducting foil on the lower surface of the presentation board would not have provided a patentable feature over the prior art.

With regard to claim 3, providing a reinforcing member for supporting said meat product placed on said hole would have been obvious, since depending on the size and type of meat to be frozen and the strength of the foil used for covering the hole, support would be necessary to prevent the meat from rupturing the foil and falling through the hole.

With regard to claim 4, Liberman discloses wherein the meat product is fish (Paragraph 0014).

8. **Claims 5 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Liberman (US 20020106443) in view of Turpin et al. (US 4190757), as applied to claims 1, 6-10 and 36-37 above, and in further view of Liberman (US 5807598). Brastad (US 3332370) and Wheeler (US 3955348) are cited as evidence, as discussed above.**

Regarding instant claim 5, the prior art is silent in teaching wherein said fish is sliced salmon.

Liberman et al. ('598) disclose using trims of salmon to mold a meat product using a cooled brine freezing method.

Therefore, the teachings of Liberman et al. ('598) suggest to one having ordinary skill in the art that any type of fish, such as sliced salmon, can be placed in a container for freezing.

Regarding instant claim 38, Liberman is silent in teaching wherein the presentation board is made in the form and shape of a logo.

Liberman et al. '598 disclose that the mold for said fish meat may be in the shape of a fish fillet or in the shape of a steak or hamburger patty if the meat is beef (Column 3, Lines 43-48). Therefore, Liberman et al. '598 provide motivation to one having ordinary skill in the art that the mold can be shaped into any desirable figure. Providing the shape of the meat into the TRUFRESH® logo would not provide a patentable distinction between the current invention and the prior art.

- 9. Claims 1, 2, 4, 6-10 and 36 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mead (US 2507862) in view of Morrison (US 2807548) and Liberman (US 20020106443).**

Mead teaches placing meat (Column 1, Line 7) on a presentation board (Figure 1; Column 2, Lines 15-23) comprising opposite upper and lower surfaces

(Figure 1, Item 1 and Item 1^{*}) and a hole at the center of said presentation board (Figure 1) extending from the upper surface (Figure 1, Item 1) to the lower surface (Figure 1, Item 1^{*}).

Mead is silent in teaching wherein the hole is covered by a heat conducting foil placed on the upper and lower surfaces, as recited in instant claims 1, 2 and 36.

Morrison discloses a method for packaging food product by wrapping said food product within said package using metallic foil (Column 2, Lines 10-11) and wherein said wrapping is aluminum foil (Column 3, Lines 15-18). Upon wrapping with foil, the food containing package of Morrison can then be put into a freezing bath, for freezing the contents thereof and then shipped for retail sale (Column 2, Lines 40-48). The teachings of Morrison provide evidence that wrapping said food containing package with foil provides the package with heat conduction for immersion freezing. Additionally, Morrison teaches by wrapping the package in vapor proof, flexible metallic wrapper that provides good conduction (Column 2, Lines 6-15), then the packages can be frozen as a group and would result in rapid freezing (Column 2, Lines 16-24) of a group of packages. Morrison further teaches individually wrapping each package in a metal foil for the purpose of increasing the freezing process (Column 4, Lines 22-31). Such a process would result in more consistent freezing of each packaged product and would eliminate handling steps, thus improving the freezing results (Column 1, Lines 65-70).

Based on the teachings of Morrison, it would have been obvious to one having ordinary skill in the art to wrap the aluminum presentation board of Mead with aluminum foil on both the upper and lower surfaces for the purpose of providing additional means for quickly removing heat from the food source for the purpose of quick-freezing while also being able to simultaneously freeze the products as a group, thus eliminating the additional handling steps to each individual package which could result in inconsistent freezing and deterioration of the food product.

The combined teachings of the prior art are silent in teaching placing presentation board together with the meat product into a bag, vacuum sealing said bag after said meat product and said presentation board are introduced into said bag and immersing said sealed bag into a cooled brine for freezing.

Liberman (US 20020106443) teaches placing a meat product on a presentation board into a bag and vacuum sealing said bag (Paragraph 0033) and subsequently immersing said bag into cooled brine for freezing (Paragraph 0033). Liberman teaches that vacuum packaged products require less time to be completely frozen (Paragraph 0033). The immersion in the brine solution for freezing is a rapid freezing process which avoids or reduces the purge, thereby preserving the flavor and texture of the meat products (Paragraph 0032). Based on these teachings, it would have been obvious to place the package of modified Mead into a vacuum sealed bag and then immerse in a brine solution, as taught by Liberman for the purpose of providing a rapid freezing process that preserves

the flavor and texture of the meat. Such a modification would have prevent the amount of purge or drip which results after thawing of frozen meat products (Paragraph 0004).

Regarding instant claims 6-10, Mead is silent in teaching the specifics of the brine solution used for freezing and the temperature of the brine solution. Liberman teaches wherein the brine solution used for freezing the meat product contains at least about 0.005% by weight of cruciferous oil. Liberman further teaches using cruciferous oil at less than 1 percent (Paragraph 0023), thus teaching using between 0.005 and 0.018 percent, as recited in instant claims 6 and 7. Regarding instant claim 8, Liberman teaches using rapeseed oil as the cruciferous oil (Paragraph 0015). Regarding instant claims 9-10 Mead teaches the cooled brine is between -22 and -43.6°F (Paragraph 0029).

Liberman further teaches the above specifics of the brine solution for the purpose of freezing a meat product that still retains its flavor and attempts to avoid or reduce purge (Paragraph 0032). Therefore by using the immersion freezing in brine, as taught by Liberman and as discussed above, it would have been obvious to one having ordinary skill in the art to have used the specifics of the brine immersion solution for the purpose of achieving a meat product that uniformly freezes the meat and retains its flavor and texture.

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Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 3288346, US 4569279, US3552302, US 3332370 and US 3955488 are also cited to teach an apertured surface over which is placed a secondary material for the purpose of preventing a food product from falling through said apertured surface.

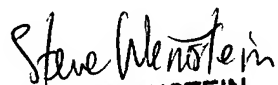
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Viren Thakur whose telephone number is (571)-272-6694. The examiner can normally be reached on Monday through Friday from 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571)272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Viren Thakur
Examiner
Art Unit: 1761


STEVE WEINSTEIN
PRIMARY EXAMINER
9/4/07